

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 183)

SALT LAKE CITY CORPORATION–ADVERSE ABANDONMENT–IN SALT
LAKE CITY, UT

Decided: January 11, 2002

On November 13, 2001, Salt Lake City Corporation (City) filed an adverse application under 49 U.S.C. 10903 requesting that we authorize the abandonment by Union Pacific Railroad Company (UP) of a portion of a line of railroad known as the 900 South Line extending from milepost 781.0 to milepost 782.32 in Salt Lake City, UT, a distance of 1.32 miles.¹ On December 28, 2001, UP filed a protest. On the same day, UP also filed a motion for a protective order that discovery not be had, pursuant to 49 CFR 1114.21(c)(1).² Also, on December 28, 2001, the City filed a petition to hold this proceeding in abeyance pending the outcome of court proceedings instituted by the City.³ UP replied to the petition on January 3, 2002. On January 10, 2002, the City filed a reply to UP's motion for a protective order, a motion to compel UP to respond to specific interrogatories and document production requests, and a petition for an extension of time to file its reply to UP's protest. The City requests expedited handling of these matters. UP replied in opposition to the City's request for an extension of time to file its reply.

DISCUSSION AND CONCLUSIONS

We will grant UP's motion for a protective order that discovery not be had because discovery would serve no useful purpose. The City has already filed its application, which, according to our regulations, must contain its entire case in support of abandonment of the rail

¹ Notice of the filing was served and published in the Federal Register (66 FR 60241-42) on December 3, 2001.

² Pursuant to 49 CFR 1114.26 and 1114.30, the City served interrogatories and document production requests on UP on December 24, 2001, requesting that UP respond by January 8, 2002. UP attached to its motion copies of the interrogatories and document production requests. UP provided its answers and objections to the discovery requests to the City on January 8, 2002.

³ Salt Lake City Corporation v. Union Pacific Railroad Company, Case No. 2:01-CV-655ST (D. Utah, filed Nov. 5, 2001).

line.⁴ At this stage of the proceeding, any further filing by the City may only be in response to UP's protest; it may not contain any new or additional evidence in support of the application. Moreover, discovery is not necessary for the City to respond to the protest. The City is fully capable of addressing, and the Board is fully capable of deciding, the relevant issue in this proceeding – whether the public convenience and necessity (PC&N) require or permit the abandonment of the rail line – without the City conducting the sought discovery, particularly given the breadth and timing of its discovery request. In view of this action, the City's motion to compel will be denied.

The City's petition to hold this proceeding in abeyance pending the outcome of the court proceedings will be denied. There is no reason to postpone deciding the PC&N issue before us in this abandonment proceeding until the court resolves the dispute before it involving the interpretation of the Franchise Agreement between the City and UP. The determination of whether the PC&N require or permit the abandonment is exclusively within our jurisdiction.⁵

The City also petitions that we extend the due date for the City's reply until one week from the date UP provides and the City receives the information and documents that are responsive to the City's discovery requests. Because we have denied the City's motion to compel, we will also deny this petition. However, because the City's reply to UP's protest is due on January 14, 2002, we will extend the due date for the City's reply until January 22, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. UP's motion for a protective order is granted and UP is not required to produce the documents sought by the City or to answer the City's interrogatories.
2. The City's motion to compel is denied.
3. The City's petition to hold this proceeding in abeyance is denied.

⁴ 49 CFR 1152.22. Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10901, 1 S.T.B. 894, 906 (1996) and 2 S.T.B. 311, 314 (1997).

⁵ Also, with regard to the City's request here, we should note that the City has had complete control over the timing of the court filing and of this application, and thus we find it curious that the City is now seeking an abeyance of this proceeding.

4. The City's motion for an extension of time to reply to UP's protest is denied. However, we will extend the due date for the City's reply until January 22, 2002.

5. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary